IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 124 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAMIR SIDHI BHIMBHA

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 124 of 2003

MS YAMINI J DESAI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

ADDL.PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/07/2003

ORAL JUDGEMENT

The present petition is filed challenging the order dtd.10/1/2003 passed by the Deputy Secretary, Home

Department in appeal confirming the externment order dtd.19/10/2002 passed by the Sub-Divisional Magistrate, Junagadh in Externment Case No.5 of 2002 against the externee.

2. Heard the learned counsel for the respective parties.

3. Ms.Yamini Desai, learned counsel for the petitioner has submitted that the externing authority had issued show cause notice to the petitioner - externee on 12/9/2002 asking the petitioner to show cause why the petitioner should not be externed from the districts mentioned in the show cause notice. The learned counsel for the petitioner has further submitted that thereafter, the externing authority has passed the order dtd.19/10/2002 externing the petitioner from Junagadh district as well as from contiguous districts namely Amreli, Porbandar, Rajkot City as well as Rajkot Rural for a period of two years, illegally and without any cogent and convincing evidence. The learned counsel for the petitioner has submitted that the externing authority has passed the impugned externment order externing the petitioner from contiguous districts, without any materials and the externing authority has not given reasons for externing the petitioner from the contiguous districts. He has further stated that it is true that the externing authority has power to extern the from contiguous districts, but the powers are required to be used judiciously. Learned counsel for the petitioner has drawn my attention to the show cause notice as well as the impugned order and argued that there is no evidence worth the name for externing the petitioner from contiguous districts. The learned counsel for the petitioner - externee has further submitted that the alleged offences relying on which the externing authority has passed externment order, are restricted to a particular area and therefore, there is no reason for externing the petitioner district and from contiguous districts. In support of the arguments, learned counsel for the petitioner has relied upon the decision of this Court rendered in the case of MUSTUFAMIYA PIRSAHEDMIYA SAIYED VS. STATE OF GUJARAT AND ANR. reported in 1999(1) GLH page 913. This court, in para 8 of the said judgement, has held as under;-

> "8. Another non-application of mind in the show cause notice is exposed from the concluding portion where the externing authority has mentioned that the petitioner should be externed from districts of Ahmedabad City, Ahmedabad

Rural, Gandhinagar, Kheda and Vadodara. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner were confined only to the district of Ahmedabad Rural."

Further, this Court in para 17 of the said judgement, has held as under :-

"17. The externing authority under Section 56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is proposed for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal vs. District Magistrate, Rajkot and another, reported in 3 G.L.R. 807 can be referred on this point."

5. Having heard the arguments of the learned counsel for the respective parties and considering the facts of the present case and ratio laid down by this court in the aforesaid judgement, relied upon by the learned counsel for the petitioner, it is clear that there is no indication in the order of the existence of the circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district, which shows non-application of mind on the part of the detaining authority, which vitiates the impugned order and hence the same cannot be sustained in the eye of law and requires to be quashed and set aside.

6. In view of the above, the petition is allowed. The impugned order dtd.10/1/2003 passed by the Deputy Secretary, Home Department in appeal confirming the externment order dtd.19/10/2002 passed by the Sub-Divisional Magistrate, Junagadh in Externment Case No.5 of 2002 against the externee is hereby quashed and set aside. Rule is made absolute to the aforesaid

extent. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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